

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ENGELHARD CORPORATION,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA, et al.,  
Defendants.

**UNITED STATES' MOTION FOR JUDGMENT ON  
THE PLEADINGS ON PLAINTIFF'S FOURTH CAUSE OF ACTION**

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Defendants United States of America; United States Department of Defense; Donald Rumsfeld, in his official capacity as Secretary of Defense; United States Mint; David A. Lebryk, in his official capacity as Acting Director of the United States Mint;<sup>1/</sup> United States Nuclear Regulatory Commission; and Dale E. Klein, in his official capacity as Chairman of the United States Nuclear Regulatory Commission<sup>2/</sup> (collectively “United States”), hereby respectfully move the Court to dismiss the Fourth Cause of

<sup>17</sup> Pursuant to Federal Rule of Civil Procedure 25(d), David A. Lebryk, the Acting Director of the United States Mint, is automatically substituted for Henrietta Holsman Fore as a party to this action.

<sup>21</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Dale E. Klein, the Chairman of the U.S. Nuclear Regulatory Commission, is automatically substituted for Nils J. Diaz as a party to this action.

Action in Plaintiff Engelhard Corporation's Complaint.<sup>37</sup> The United States seeks a judgment of dismissal on the grounds that Plaintiff's Fourth Cause of Action fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). Specifically, the Fourth Cause of Action should be dismissed because Engelhard has failed to resolve a common of joint liability, shared by the United States, and therefore a critical element is missing from its contribution claim. Even if Engelhard has extinguished a common liability, Engelhard's claim cannot be brought because Engelhard has failed to resolve its liability to EPA for response costs or response actions. 42 U.S.C. § 9613(f)(3)(B). Finally, assuming arguendo that Engelhard has extinguished a common liability and also resolved its liability to EPA for response costs or response actions, the Fourth Cause of Action is subject to, and barred by, the three-year statute of limitations contained in Section 113(g)(3)(B) of CERCLA, 42 U.S.C. § 9613(g)(3)(B).

In support of the relief requested in this motion, the United States relies upon its Memorandum In Support Its Motion for Judgment on the Pleadings on Plaintiff's Fourth Cause of Action, filed contemporaneously herewith, and all other materials and arguments to be properly submitted in support of the relief requested herein.

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<sup>37</sup> On October 18, 2005, the United States filed a motion (Dkt. No. 10) seeking dismissal of the First, Second, Third, Fifth, and Sixth Causes of Action in the Complaint. On April 26, 2006, the Court held a hearing on that motion, and at the close of that hearing, directed the parties to file a proposed briefing schedule for motions solely addressing the viability of Plaintiff's Fourth Cause of Action. On May 9, 2006, the Court approved the parties' proposed schedule, see Dkt. No. 23, which called for motions to be filed on July 17, 2006. On July 14, 2005, the United States filed an unopposed motion for an enlargement of time (Dkt. No. 25), seeking to move the underlying filing date to August 4, 2006. While the Court has not acted on that most recent motion, the United States is filing this motion with the understanding that August 4 is the operative filing date.

A proposed order is attached to the United States' Memorandum In Support.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), the United States respectfully requests oral argument.

Respectfully submitted,

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Assistant Attorney General  
Environment & Natural Resources Division

Dated: August 4, 2006

/s/ Stephen E. Crowley  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 4th day of August 2006, I served a true and correct copy of the foregoing UNITED STATES' MOTION FOR JUDGMENT ON THE PLEADINGS ON PLAINTIFF'S FOURTH CAUSE OF ACTION on Plaintiff's counsel of record by electronic filing, as follows:

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